

**FAIRNESS AND INDIVIDUAL RIGHTS NECESSARY
TO ENSURE A STRONGER SOCIETY:
THE CIVIL RIGHTS ACT OF 2004
("THE FAIRNESS ACT")**

Sec. 1. Short Title

This section establishes the act's title as "Protecting Individual Rights for All: The Civil Rights Act of 2004."

Sec. 2. Table of Contents

This section lists the bill's contents.

TITLE I – NONDISCRIMINATION IN FEDERALLY FUNDED PROGRAMS

Subtitle A - Disparate Impact Discrimination and Private Rights of Action

Sec. 101. Findings

This section sets forth findings that the effectiveness of Title VI of the Civil Rights Act of 1964 ("Title VI"), Title IX of the Education Amendments of 1972 ("Title IX"), and the Age Discrimination Act of 1975 depends on the right of private enforcement, including the private right to enforce protections against practices having an unjustified discriminatory effect.

Sec. 102. Prohibited Discrimination

This section amends Title VI, Title IX, and the Age Discrimination Act of 1975 to prohibit practices having an unjustified discriminatory effect. This section also prohibits retaliation against individuals who oppose practices prohibited by the act, or participate in an investigation or other proceeding under the act. This section is modeled on the disparate impact and anti-retaliation provisions of Title VII of the Civil Rights Act of 1964 ("Title VII").

Sec. 103. Rights of Action

This section amends Title VI, Title IX, and the Age Discrimination Act of 1975 to allow persons who suffer discrimination by recipients of federal funds to seek relief under these statutes in state and federal courts.

Sec. 104. Right of Recovery

This section provides that in suits under Title VI, Title IX, the Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973:

- claims for relief based on unlawful harassment will be governed by essentially the same standards applicable to harassment claims under Title VII of the Civil Rights Act of 1964;
- in suits for intentional discrimination, private plaintiffs may recover equitable and legal relief including compensatory and punitive damages, costs, attorney's fees and expert fees, except that punitive damages may not be recovered from a government entity;
- in suits under the disparate impact standard of proof, private plaintiffs may recover equitable relief, attorney's fees, expert fees, and costs.

This section also amends the Age Discrimination Act of 1975 to provide that suits under the statute may be brought either in court or before the relevant federal department or agency, and clarify that a showing that a challenged practice or decision resulted from reasonable factors other than age is a defense under the statute, but not an exception to the statute's coverage.

Sec. 105. Sovereign Immunity Waiver

This section provides that, beginning on the date this bill is enacted, state and federal governments may not raise the defense of sovereign immunity in suits under Title VI, Title IX, or the Age Discrimination Act of 1975.

Sec. 106. Construction

This section provides that Title I of the act may not be interpreted to limit Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, or any other law.

Sec. 107. Effective Date

This section provides that Title I of the act will be retroactive to April 24, 2001, except in disparate impact suits against state entities. For purposes of a disparate impact suit against a state, Title I will take effect on the date it is enacted.

Subtitle B - Harassment

Sec. 111. Findings.

This section sets forth findings that remedies available for harassment claims under Title IX, the Age Discrimination Act of 1975, and the Rehabilitation Act should mirror remedies for harassment claims in the employment context under Title VII.

Sec. 112. Right of Recovery.

This section provides that victims of discriminatory harassment who prevail in claims under Title IX, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation Act may recover equitable and legal relief – including compensatory and punitive damages, attorney's fees, and costs, except that punitive damages are not available from government entities. It also provides that an entity sued for discriminatory harassment is not liable under Title IX, the Age Discrimination Act of 1975, or section 504 of the Rehabilitation Act if it exercised reasonable care to prevent and correct promptly the alleged harassment.

TITLE II — AGE DISCRIMINATION IN EMPLOYMENT ACT AMENDMENTS

Sec. 201. Short Title

This section designates Title II as the “Older Workers’ Rights Restoration Act of 2004.”

Sec. 202. Findings

This section recognizes that age discrimination is a serious problem nationally and among state employers, which negatively affects its victims, the labor force, and the economy. This section also clarifies Congress’ intent to permit disparate impact suits under the Age Discrimination in

Employment Act (“ADEA”).

Sec. 203. Purposes

The purposes of this title are to provide state workers the same rights under the ADEA as other employees (including the right to enforce the ADEA in federal court), to provide that state officials may be sued under the ADEA in their official capacities, and to reaffirm the availability of the disparate impact standard of proof under the ADEA.

Sec. 204. Remedies for State Employees

This section provides that a state’s use or receipt of Federal financial assistance waives its sovereign immunity to suit under the ADEA and that state officials may be sued under the ADEA in their official capacities.

Sec. 205. Disparate Impact Claims

This section amends the ADEA to prohibit policies and practices that have an unjustified discriminatory effect on persons 40 years of age or older.

Sec. 206. Effective Date

Section 206 provides that Title II will take effect on the date it is enacted.

TITLE III — CIVIL RIGHTS REMEDIES AND RELIEF

Subtitle A - Prevailing Party

Sec. 301. Short Title

This section designates Title III as the “Settlement Encouragement and Fairness Act.”

Sec. 302. Definition of Prevailing Party

For purposes of statutes that allow the prevailing party in a lawsuit to recover attorney’s fees (including the Civil Rights Act of 1964, the Fair Housing Amendments Act of 1988, and the Americans with Disabilities Act of 1990), this section clarifies that the definition of “prevailing party” includes a party whose lawsuit causes the opposing party to voluntarily provide all or part of the relief requested in the suit, even if the case does not result in a court decision.

Subtitle B - Arbitration

Sec. 311. Short Title

This section designates this subtitle as the “Preservation of Civil Rights Protections Act of 2004.”

Sec. 312. Amendment to Federal Arbitration Act

This section amends the Federal Arbitration Act to exclude employment contracts.

Sec. 313. Unenforceability of Arbitration Clauses in Employment Contracts

This section prohibits mandatory arbitration clauses in employment contracts that force workers to give up the right to sue in court. This section permits arbitration clauses, however, if the worker and employer knowingly and voluntarily agree to arbitration after a dispute has arisen between them.

Sec. 314. Application of Amendments

This section provides that Subtitle B (the Preservation of Civil Rights Protections Act of 2004) and section 312 will apply to employment contracts in force before, on, or after the date of enactment of this bill.

Subtitle C - Expert Witness Fees

Sec. 321. Purpose

This section provides that the purpose of Subtitle C is to allow prevailing parties to recover expert fees under civil rights laws that already permit prevailing parties to recover attorney's fees.

Sec. 322. Findings

This section recognizes that expert witnesses play an important role in civil rights and employment cases.

Sec. 323. Effective Provisions

This section restores Congress' intent that prevailing parties may recover expert witness fees under the major civil rights and employment laws, including the Civil Rights Act of 1964, the Age Discrimination Act, the Fair Labor Standards Act of 1938, the Voting Rights Act of 1965, the Fair Housing Act, and the Age Discrimination Act of 1975.

Subtitle D - Equal Remedies Act of 2004

Sec. 331. Short Title

This section designates subtitle D as the "Equal Remedies Act of 2004."

Sec. 332. Equalization of Remedies

This section eliminates the limitations on damages in employment discrimination cases under Title VII. These limitations unfairly affect sex discrimination claims because employment discrimination claims based on race and national origin may be brought under 42 U.S.C. § 1981, which does not limit damages.

TITLE IV--PROHIBITIONS AGAINST SEX DISCRIMINATION

Sec. 401. Short Title

This section designates Title IV as the "Paycheck Fairness Act."

Sec. 402. Findings

This section sets forth findings that working women earn significantly less than men for work requiring equal skill, effort, and responsibility performed under similar conditions.

Sec. 403. Enhanced Enforcement of Equal Pay Requirements

This section amends the Equal Pay Act by: requiring that differences in pay between men and women be based on a *bona fide* factor other than sex; prohibiting retaliation against persons who provide or seek information under the Fair Labor Standards Act, or participate in proceedings under that law; allow victims of wage discrimination to recover compensatory and punitive damages from employers (except federal government employers), and expert fees; and clarifying that Equal Pay Act cases may be brought as class actions.

Sec. 404. Training

This section provides that, subject to the availability of funds under section 409, the Equal Employment Opportunity Commission ("EEOC") and Office of Federal Contract Compliance Programs will train EEOC employees and affected persons and entities regarding wage discrimination.

Sec. 405. Research, Education, and Outreach

This section directs the Secretary of Labor to study ways to eliminate pay differences between men and women, and to provide employers, unions, and the public with information on this subject.

Sec. 406. Technical Assistance and Employer Recognition Program

This section directs the Secretary of Labor to develop and publish guidelines to help employers voluntarily examine potential pay differences between men and women. This section also provides that the Secretary of Labor will give technical assistance to employers in evaluating possible gender differences in pay and formally recognize employers that voluntarily correct such pay differences.

Sec. 407. Establishment of the National Award for Pay Equity in the Workplace

This section establishes the Secretary of Labor's Award for Pay Equity in the Workplace to recognize business that make substantial efforts to eliminate pay differences between men and women.

Sec. 408. Collection of Pay Information by the Equal Employment Opportunity Commission

This section directs the EEOC to examine available data regarding differences in pay and to determine whether enhanced data collection is needed to enforce federal pay discrimination laws.

Sec. 409. Authorization of Appropriations

This section provides for appropriation of funds to carry out Title IV of this Act.

TITLE V — PROTECTIONS FOR WORKERS

Subtitle A — Protection for Undocumented Workers

Sec. 501. Findings

This section recognizes that the inability of undocumented workers to receive back pay for violations of the National Labor Relations Act undermines enforcement of that statute.

Sec. 502. Continued Application of Backpay Remedies

This section amends Section 274A(h) of the Immigration and Nationality Act to allow undocumented workers to receive back pay if they are the victims of unlawful employment practices.

Subtitle B — Fair Labor Standards Act Amendments

Sec. 511. Short Title

This section designates this subtitle as the “Workers’ Minimum Wage and Overtime Rights Restoration Act of 2004.”

Sec. 512. Findings

This section sets forth Congressional findings that wage and overtime violations in employment remain a serious problem nationally and among states and other recipients of federal funds and that such violations negatively affect their victims, the labor force, and the general welfare and economy.

Sec. 513. Purposes

The purposes of this subtitle are to give state workers in programs or activities receiving federal funds the same rights under the Fair Labor Standards Act as other workers.

Sec. 514. Remedies for State Employees

This section provides that a state’s receipt of federal financial assistance waives that state’s immunity from suits under the Fair Labor Standards Act.

TITLE VI — AMENDMENTS TO THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT OF 1994

This title amends the Uniformed Services Employment and Reemployment Rights Act (“USERRA”) to give state workers in programs or activities receiving Federal funds the same employment rights that federal and private sector employees enjoy under USERRA.